CALIFORNIA DEPARTMENT

OF EDUCATION

TONY THURMOND

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

# NOTICE OF PROPOSED RULEMAKING

## AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING CALIFORNIA STATE PRESCHOOL PROGRAM

Notice published December 18, 2020

**NOTICE IS HEREBY GIVEN** that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing at 8:30 a.m. on February 1, 2021. Any interested person may participate in the public hearing via Zoom meeting by logging in per the following instructions:

* Click the following link or paste the link to the browser to join the webinar and enter the password:

<https://us02web.zoom.us/j/84329983436>

Password: 403162

* To connect with audio only and no video, call one of the following telephone numbers and enter the meeting ID and password:

669 900 9128

213 338 8477

Meeting ID: 843 2998 3436

Password: 403162

For persons intending to attend the Zoom meeting, those persons may check their computers by:

* Clicking on the test link: <https://zoom.us/test>.
* For any issues regarding connecting with Zoom, go to <https://support.zoom.us/hc/en-us> for assistance.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

### REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973,* the *Americans with Disabilities Act of 1990,* and the *Unruh Civil Rights Act,* any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations may request assistance by contacting Danielle Davis, Early Learning and Care Division, 1430 N Street, Suite 3410, Sacramento, CA, 95814; telephone, 916-322-4883. It is recommended that assistance be requested at least two weeks prior to the hearing.

### WRITTEN COMMENT PERIOD

Any interested person, or that person’s authorized representative, may submit written comments relevant to the proposed regulatory action to:

Lorie Adame, Regulations Coordinator

Administrative Support and Regulations Adoption Unit

California Department of Education

1430 N Street, Room 5319

Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-322-2549 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to or on February 1, 2021. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of all modified regulations will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to the regulations, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

### AUTHORITY AND REFERENCE

Authority: Sections 8235, 8235.5, 8236, 8236.3, 8261, 8261.5, 8263, 8263.1, 8264.7, 8265 and 8269, Education Code; and Section 1596.9725, Health and Safety Code.

References: Sections 8202, 8203, 8203.1, 8203.5, 8204, 8206, 8208, , 8235, 8236, 8236.3, 8237, 8239, 8239.1, 8244, 8250, 8261, 8261.5, 8263, 8263.1, 8263.3, 8264.7, 8264.8, 8265, 8266.1, 8266.2, 8266.5, 8269, 8271, 8273, 8273.1, 8273.3, 8275, 8276.7, 8280, 8328, 8360, 8360.1, 8400, 8401, 8401.5, 8402, 8403, 8404, 8405, 8406, 8406.6, 8406.7, 8406.9, 8407, 8408, 8409, 8444, 8445, 8447, 8447.5, 8448, 17002, 33420, 41020.5, 56026, 56443 and 48000, Education Code; Sections 1596.792 and 1596.7925, Health and Safety Code; Section 1798.24, Civil Code; Sections 10850, 16500.5 and 16506, Welfare and Instruction Code; and 45 Code of Federal Regulations Section 98.21.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Education (CDE) has administered subsidized early learning and care services for children from infancy to 13 years of age and their parents since the Child Care and Development Services Act (Act) was established in 1980, chapter 2 of part 6 of the Education Code (EC), starting at section 8200 et seq. The intent of the Act is that qualified subsidized early learning and care services be provided to children and families meeting the eligibility criteria established under the Act.

The California State Preschool Program (CSPP) as established by EC section 8235, provides three- and four-year-old children with a developmentally appropriate program designed to facilitate their transition to kindergarten. This program includes education, development, health services, social service, nutritional service, parent education and participation, evaluation, and staff development.

Eligibility criteria for full-day CSPP are set forth in ECsection 8263 and require a family to meet both “eligibility” and “need” criteria pursuant to ECsections 8263(a)(1)(A) and (B). The Budget Act of 2019, Senate Bill (SB) 75, amended ECsection 8263 to allow full-day CSPP contractors to now enroll three- and four-year-old children whose families do not meet a “need” criteria pursuant to EC section 8263(a)(1)(B) after all other CSPP-eligible families have been enrolled.

SB 75 also added ECsection 8236.3 which made the following changes to eligibility and enrollment priorities for CSPP programs:

* Allows for the CSPP contracted sites operating within the attendance boundary of a public elementary school, except charter and magnet schools, where at least 80 percent of enrolled students are eligible for free and reduced price meals (FRPM) to enroll CSPP four-year-old children whose families reside within the school boundaries of a qualified FRPM school.
* Sets CSPP eligibility and enrollment priorities for families residing within the school boundaries of a qualified FRPM school.

SB 75 authorized the SSPI to provide guidance and instruction to implement this provision through a Management Bulletin (MB) on or before December 1, 2019. The CDE released FRPM-related guidance in MB 20-01. In addition to initiating the regulatory process no later than December 31, 2020, the SSPI must convene a workgroup of specified stakeholders to develop recommendations regarding the implementation of the provisions.

SB 98, the education omnibus budget trailer bill of 2020 amended part 1.7 of the Welfare and Institutions Code effectively transferring the following early learning and care programs from the CDE to the California Department of Social Services (CDSS) beginning July 1, 2021: (1) Alternative payment programs (CAPP); (2) Migrant alternative payment programs (CMAP); (3) CalWORKs Stage 2 (C2AP); (4) CalWORKs Stage 3 (C3AP); (5) General child care and development programs (CCTR); (6) Migrant child care and development programs (CMIG); and (7) Childcare and development services for children with severe disabilities (CHAN). This transfer will separate the CSPP from all other contracted early learning and care programs that are currently administered by the CDE.

The objectives of these proposed regulations include fulfilling the Legislature’s directive in SB 75 described above to align the regulations to current law and to provide further clarity to CSPP contractors on the applicable part-day and full-day CSPP regulations ensuring more efficient administration of the CSPP.

***Anticipated Benefits of the Proposed Regulations***

The benefit of enacting the proposed regulations will align the title 5 regulations with the statutory changes from SB 75, and, with changes from SB 98, separate the CSPP regulations from the other early learning and care programs administered by the CDE. This regulation package will further clarify the differences in which regulations are applicable for full-day and part-day CSPP. These regulations will achieve clarity, consistency, and an efficient administration of the CSPP for early learning and care contractors. Additionally, the benefit anticipated by the proposed regulations is the assurance of the continued health and safety of young children enrolled in these programs. These regulations are specifically appropriate for a preschool environment

***Determination of Inconsistency/Incompatibility with Existing State Regulations***

The SSPI has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the SSPI has concluded that these are the only regulations that concern CSPP.

### DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SSPI has made the following initial determinations:

*Other statutory requirements*: There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

*Mandate on local agencies and school districts*: None

*Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code:* None

*Cost or savings to any state agency:* None

*Other non-discretionary costs or savings imposed on local agencies, including local educational agencies:*  None.

*Costs or savings in federal funding to the state*: None

*Effect on housing costs*: None

*Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other stat*es: None

*Cost impacts on a representative private person or businesses*: The SSPI is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

*Report required*: The proposed regulations do not require a report to be made.

*Effect on small businesses*: The proposed regulations would not have an effect on any small business because they are only relevant to the contractors of subsidized programs contracted through the CDE.

### results of the Economic Impact Analysis

The SSPI concludes that it is unlikely that these proposed regulations will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

### Benefits of the Proposed Action: The proposed regulations will benefit children and families in California as they take advantage of high-quality early learning and care programs guided by these proposed regulations.

### CONSIDERATION OF ALTERNATIVES

The SSPI must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SSPI, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### CONTACT PERSONS

Inquiries concerning the content of these proposed regulations should be directed to:

Danielle Davis, Consultant

Early Learning and Care Division

California Department of Education

1430 N Street, Suite 3410

Sacramento, CA 95814

Telephone: 916-322-4883

Email: DDavis@cde.ca.gov

Inquiries concerning the regulatory process may be directed to Lorie Adame, Regulations Coordinator or the backup contact person, Hillary Wirick, Regulations Analyst, at 916-319-0860.

### TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS AND AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INFORMATION

The SSPI has prepared an Initial Statement of Reasons for the proposed regulations. This document and the text of the proposed regulations may also be viewed and downloaded from the CDE’s website at [*http://www.cde.ca.gov/re/lr/rr/*](http://www.cde.ca.gov/re/lr/rr/). All of the information upon which the proposed action is based may be obtained upon request from the Regulations Coordinator.

### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator. All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

11-23-2020 [California Department of Education]